

12-27-1999



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RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

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TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

- New
- Resubmission (Non-Recordation)
Document ID #
- Correction of PTO Error
Reel # Frame #
- Corrective Document
Reel # Frame #

Conveyance Type

- Assignment
- License
- Security Agreement
- Nunc Pro Tunc Assignment
Effective Date
Month Day Year
- Merger
- Change of Name
- Other Pledge and Security Agreement

Conveying Party

Mark if additional names of conveying parties attached

Name NorthPoint Communications, Inc.

Execution Date
Month Day Year
12 09 99

Formerly

- Individual
- General Partnership
- Limited Partnership
- Corporation
- Association

Other

Citizenship/State of Incorporation/Organization Delaware

Receiving Party

Mark if additional names of receiving parties attached

Name Canadian Imperial Bank of Commerce

DBA/AKATA

Composed of

Address (line 1) 45 Lexington Avenue

Address (line 2)

Address (line 3) New York New York 10017

City

State/Country

Zip Code

- Individual
- General Partnership
- Limited Partnership

- Corporation
- Association

Other Chartered Bank

Citizenship/State of Incorporation/Organization United States

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

12/29/1999 TTON11 00000119 2215499

FOR OFFICE USE ONLY

01 FC:401
02 FC:402

40.00 DP
100.00 DP

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Pages

Enter the total number of pages of the attached conveyance document including any attachments.

#

Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

Registration Number(s)

<input type="text" value="75801028"/>	<input type="text" value="75666669"/>	<input type="text" value="75666668"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

<input type="text" value="2215499"/>	<input type="text" value="2215479"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

Number of Properties

Enter the total number of properties involved.

#

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41):

\$

Method of Payment:

Enclosed

Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

#

Authorization to charge additional fees:

Yes

No

Statement and Signature

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Diane J. Kasselmann

December 16, 1999

Name of Person Signing

Signature

Date Signed

PLEDGE AND SECURITY AGREEMENT

This **PLEDGE AND SECURITY AGREEMENT**, dated as of December 9, 1999 (this "**Agreement**"), between **EACH OF THE UNDERSIGNED**, whether as an original signatory hereto or as an Additional Grantor (as herein defined) (each, a "**Grantor**"), and **CANADIAN IMPERIAL BANK OF COMMERCE**, as Administrative Agent for Lenders and Lender Counterparties (in such capacity as agent, "**Secured Party**").

RECITALS:

WHEREAS, reference is made to that certain Credit and Guaranty Agreement, dated as of December 9, 1999 (as it may be amended, supplemented or otherwise modified, the "**Credit Agreement**"; the terms defined therein and not otherwise defined herein being used herein as therein defined), by and among **NORTHPOINT COMMUNICATIONS, INC.**, **NORTHPOINT COMMUNICATIONS GROUP, INC.**, certain Subsidiaries of Company, as Guarantors, the Lenders party thereto from time to time, **GOLDMAN SACHS CREDIT PARTNERS L.P.**, as Lead Arranger and Syndication Agent, **CANADIAN IMPERIAL BANK OF COMMERCE**, as Administrative Agent, and **NEWCOURT COMMERCIAL FINANCE CORPORATION**, an affiliate of **THE CIT GROUP, INC.**, as Documentation Agent;

WHEREAS, subject to the terms and conditions of the Credit Agreement, certain Grantors may enter into one or more Hedge Agreements with one or more Lender Counterparties;

WHEREAS, in consideration of the extensions of credit and other accommodations of Lenders and Lender Counterparties as set forth in the Credit Agreement and the Hedge Agreements, respectively, each Grantor has agreed, subject to the terms and conditions hereof, each other Credit Document and each of the Hedge Agreements, to secure such Grantor's obligations under the Credit Documents and the Hedge Agreements as set forth herein; and

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, each Grantor and Secured Party agree as follows:

SECTION 1. GRANT OF SECURITY; DEFINITIONS

- a. **Grant of Security.** Each Grantor hereby assigns, pledges and transfers to Secured Party and grants to Secured Party a security interest in and lien on all of Grantor's right, title and interest in and to the following, in each case whether now or hereafter existing or in which Grantor now has or hereafter acquires an interest and wherever the same may be located (collectively, the "**Collateral**"):
 - i. all "**Investment Property**", which term means:

- (1) all right, title and interest of such Grantor, whether now owned or hereafter acquired, in all investment property (as defined in the Uniform Commercial Code as in effect from time to time in the State of New York (the "**UCC**")) and all shares of capital stock owned by such Grantor, including without limitation, all shares of capital stock described on Schedule 1.1(a), and the certificates representing such shares and any interest of such Grantor in the entries on the books of any securities intermediary pertaining to such shares, and all dividends, cash, warrants, options, rights, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such shares (all of the foregoing being referred to herein collectively as the "**Pledged Stock**");

- (2) all right, title and interest of such Grantor, whether now owned or hereafter acquired, of all Indebtedness owed to such Grantor, including, without limitation, all Indebtedness described on Schedule 1.1(a), issued by the obligors named therein, the instruments evidencing such Indebtedness, and all interest, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such Indebtedness (all of the foregoing being referred to herein collectively as the "**Pledged Debt**");

- (3) all of such Grantor's right, title and interest as a limited and/or general partner in all partnerships, including, without limitation, the partnerships described on Schedule 1.1(a) (the "**Partnerships**"), whether now owned or hereafter acquired, including, without limitation, all of such Grantor's right, title and interest in, to and under the partnership agreements described on Schedule 1.1(a) (as such agreements have heretofore been and may hereafter be amended, restated, supplemented or otherwise modified from time to time, collectively, the "**Partnership Agreements**") to which it is a party (including, if such Grantor is a general partner of any Partnership, the right to vote with respect to and to manage and administer the business of such Partnership) together with all other rights, interests, claims and other property of such Grantor in any manner arising out of or relating to its limited and/or general partnership interest in the Partnerships, whatever their respective kind or character, whether they are tangible or intangible property, and wheresoever they may exist or be located, and further including, without limitation, (1) all of the rights of such Grantor as a

limited and/or general partner: (A)(I) to receive money due and to become due (including without limitation profits, dividends, distributions, interest, income from partnership properties and operations, proceeds of sale of partnership assets and returns of capital) under or pursuant to the Partnership Agreements, (II) to receive payments upon termination of the Partnership Agreements, and (III) to receive any other payments or distributions, whether cash or noncash, in respect of such Grantor's limited and/or general partnership interest; (B) in and with respect to claims and causes of action rising out of or relating to the Partnerships; and (C) to have access to the Partnerships' books and records and to other information concerning or affecting the Partnerships; and (2) any "**certificate of interest**" or "**certificates of interest**" (or other certificates or instruments however designated or titled) issued by the Partnerships and evidencing such Grantor's interest as a limited and/or general partner in the Partnerships (collectively, the "**Certificates**") and any interest of such Grantor in the entries on the books of any securities intermediary pertaining to such Grantor's interest as a limited and/or general partner in the Partnerships (all of the foregoing being referred to herein collectively as the "**Partnership Interests**");

- (4) all of such Grantor's right, title and interest as a member of all limited liability companies (the "**LLCs**"), including, without limitation, all of such Grantor's right, title and interest in, to and under the limited liability company interests set forth on Schedule 1.1(a), whether now owned or hereafter acquired, including, without limitation, all of such Grantor's right, title and interest in, to and under the operating agreements with respect to any such LLC (as such agreements have heretofore been and may hereafter be amended, restated, supplemented or otherwise modified from time to time, collectively, each, an "**LLC Agreement**") to which it is a party, regardless of whether such right, title and interest arises under such LLC Agreement, including (1) all rights of such Grantor to receive distributions of any kind, in cash or otherwise, due or to become due under or pursuant to each such LLC Agreement or otherwise in respect of such Person, (2) all rights of such Grantor to receive proceeds of any insurance, indemnity, warranty or guaranty with respect to each such Person, (3) all claims of such Grantor for damages arising out of, or for the breach of, or for a default under, each such LLC Agreement, (4) any certificated or uncertificated security evidencing any of the foregoing issued by such Person to such Grantor and (5) to the extent not included in

the foregoing, all proceeds of any and all of the foregoing (all of the foregoing being referred to herein collectively as the "**LLC Interests**" with the Pledged Stock, the Pledged Debt, the Partnership Interests and the LLC Interests being herein collectively referred to as the "**Pledged Interests**");

- (5) all additional shares of, limited and/or general partnership interests in and limited liability company interests in, and all securities (or other equity interests) convertible into and warrants, options and other rights to purchase or otherwise acquire, stock of any issuer of the Pledged Stock, limited and/or general partnership interests in the Partnerships, and limited liability company interests in the LLCs, from time to time acquired by such Grantor in any manner (which shares or interests shall be deemed to be part of the Pledged Interests), the certificates or other instruments representing such additional shares or interests, securities, warrants, options or other rights and any interest of such Grantor in the entries on the books of any securities intermediary pertaining to such additional shares or interests, and all additional indebtedness from time to time owed to such Grantor by any obligor on the Pledged Debt and the instruments evidencing such indebtedness, and all interest, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such indebtedness; (all of the foregoing being referred to herein collectively as the "**Additional Pledged Interests**"), and all dividends, distributions, cash, warrants, options, rights, instruments, payments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such Additional Pledged Interests; and
- (6) all shares of, limited and/or general partnership interests in, and limited liability company interests in, and all securities (or other equity interests) convertible into and warrants, options and other rights to purchase or otherwise acquire, stock of, limited and/or general partnership interests in, or limited liability company interests in any Person that, after the date of this Agreement, becomes, as a result of any occurrence, a direct Subsidiary of such Grantor (which shares or interests shall be deemed to be part of the Pledged Interests), the certificates or other instruments representing such shares, interests, securities, warrants, options or other rights and any interest of such Grantor in the entries on the books of any securities intermediary pertaining to such shares or interests and all

dividends, distributions, cash, warrants, rights, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such shares, interests, securities, warrants, options or other rights, and all Indebtedness from time to time owed to such Grantor by any Person that, after the date of this Agreement, becomes, as a result of any occurrence, a Subsidiary of such Grantor, and the instruments evidencing such Indebtedness, and all interest, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such Indebtedness;

ii. all "**Intellectual Property**", which term means:

(1) all United States and foreign trademarks, service marks, designs, logos, indicia, trade names, corporate names, company names, business names, fictitious business names, trade styles and/or other source and/or business identifiers, and all trademark or service mark registrations and applications (except for U.S. "intent to use" applications for trademark or service mark registrations filed pursuant to Section 1(b) of the Lanham Act, unless and until an Amendment to Allege Use or a Statement of Use under Sections 1(c) and 1(d) of said Act has been filed), owned or used by the Grantor in its business, or hereafter adopted and used by Grantor, together with the goodwill of the Grantor's business connected with the use of, and symbolized by each such mark including, without limitation, the trademarks specifically identified in Schedule 1.1(b), and the right to sue for past infringement or dilution of any of the foregoing or for any injury to goodwill, and all proceeds of the foregoing, including, without limitation, license royalties, income, payments, claims, damages, and proceeds of suit, (all of the foregoing collectively, the "**Trademarks**").

(2) all United States and foreign patents and patent applications and rights and interests in patents and patent applications including, without limitation, the patents and patent applications listed in Schedule 1.1(b), all re-issues, divisions, continuations, renewals, reexaminations, extensions and continuations-in-part thereof,

all rights (but not obligations corresponding thereto), including, without limitation, the right (but not the obligation, and exercisable only upon the occurrence and continuation of an Event of Default) to sue for past, present and future infringements in the name of such Grantor or in the name of Secured Party in each case, at the option of Secured Party, and all proceeds of the foregoing including, without limitation, licenses, royalties, in-

come, payments, claims, damages, and proceeds of suit of any of the foregoing, (all of the foregoing being collectively referred to as the "**Patents**"); it being understood that the rights and interest included herein hereby shall include, without limitation, all rights and interests pursuant to licensing or other contracts in favor of such Grantor pertaining to patent applications and patents presently or in the future owned or used by third parties but, in the case of third parties which are not Affiliates of Grantor, only to the extent permitted by such licensing or other contracts and, if not so permitted, only with the consent of such third parties; and

- (3) all United States and foreign published and unpublished works of authorship including, without limitation, computer programs, computer data bases, other computer software, including without limitation, object code and source code, mask works, semiconductor chips, masks, cell libraries, layouts, drawings, designs, schematics, including any and all software implementations of algorithms, models and methodologies, including, without limitation, the works listed on Schedule 1.1(b), all copyrights, all registrations and applications therefor, including, without limitation, the registrations and applications listed on Schedule 1.1(b), all copyright licenses (but with respect to such copyright licenses, only to the extent permitted by such licensing arrangements and, if not so permitted, only with the consent of the other party thereto) (all of the foregoing being referred to herein collectively as the "**Copyrights**"), including, without limitation, each of the Copyrights, rights, titles and interests in and to the Copyrights and works protectable by copyright, which are presently, or in the future may be, owned, created (as a work for hire for the benefit of such Grantor or otherwise), authored (as a work for hire for the benefit of such Grantor or otherwise), acquired or used (whether pursuant to a license or otherwise but only to the extent permitted by agreements governing such license or other use and, if not so permitted, only with the consent of the other party thereto) by such Grantor, in whole or in part, and all Copyrights with respect thereto and all registrations therefor, heretofore or hereafter granted or applied for, and all renewals and extensions thereof, throughout the world, including all proceeds thereof (such as, by way of example and not by limitation, license royalties and proceeds of infringement suits), the right (but not the obligation) to renew and extend such Copyrights and to register works protectable by copyright and the right (but not the obligation and exercisable only upon the occurrence and continuation of an Event of Default) to sue in the name of such Grantor or in the name of Secured Party in each case, at the option of Secured Party, for past, present and future in-

fringements of the Copyrights; all trade secrets and all other confidential or proprietary information, technology, know-how inventions, processes, formulae, algorithms, models and methodologies, now or hereafter owned or used in, or contemplated at any time for use in, the business of such Grantor (all of the foregoing being collectively called a "Trade Secret"), whether or not such Trade Secret has been reduced to a writing or other tangible form, including all documents and things embodying, incorporating, or referring in any way to such Trade Secret, the right to sue for past infringement of any Trade Secret, and all proceeds of the foregoing, including, without limitation, licenses, royalties, income, payments, claims, damages, and proceeds of suit.

- iii. the Collateral Account, together with all amounts on deposit from time to time in any Deposit Accounts, all Securities Accounts, and all interest, cash, instruments, securities, Financial Assets and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the foregoing;
- iv. all of such Grantor's right, title and interest in, to and under any equipment in all of its forms, all accessions or additions thereto, all parts thereof, whether or not at any time of determination incorporated or installed therein or attached thereto, and all replacements therefor, wherever located, now or hereafter existing (all of the foregoing being referred to herein collectively as the "**Equipment**");
- v. all of such Grantor's right, title and interest in, to and under any inventory in all of its forms, including, but not limited to, (i) all goods held by such Grantor for sale or lease or to be furnished under contracts of service or so leased or furnished, (ii) all raw materials, work in process, finished goods, and materials used or consumed in the manufacture, packing, shipping, advertising, selling, leasing, furnishing or production of such inventory or otherwise used or consumed in such Grantor's business, (iii) all goods in which such Grantor has an interest in mass or a joint or other interest or right of any kind, (iv) all goods which are returned to or repossessed by such Grantor, and all accessions thereto and products thereof (all of the foregoing being referred to herein collectively as the "**Inventory**"), and (v) all negotiable and non-negotiable documents of title, including, without limitation, warehouse receipts, dock receipts and bills of lading issued by any Person covering any Inventory;
- vi. all of such Grantor's right, title and interest in, to and under any accounts, contract rights, chattel paper, documents, instruments, general

intangibles, payment intangibles and other rights and obligations of any kind (all of the foregoing being referred to herein collectively as the "**Accounts**") and all of such Grantor's rights in, to and under all security agreements, leases and other contracts securing or otherwise relating to any Accounts (all of the foregoing being referred to herein collectively as the "**Related Contracts**");

- vii. all of such Grantor's right, title and interest in, to and under all agreements and contracts to which such Grantor is a party as of the date hereof, or to which such Grantor becomes a party after the date hereof, as each such agreement may be amended, supplemented or otherwise modified from time to time (all of the foregoing being referred to herein collectively as the "**Assigned Agreements**"), including (i) all rights of such Grantor to receive moneys due or to become due under or pursuant to the Assigned Agreements, (ii) all rights of such Grantor to receive proceeds of any insurance, indemnity, warranty or guaranty with respect to the Assigned Agreements, (iii) all claims of such Grantor for damages arising out of any breach of or default under the Assigned Agreements, and (iv) all rights of such Grantor to terminate, amend, supplement, modify or exercise rights or options under the Assigned Agreements, to perform thereunder and to compel performance and otherwise exercise all remedies thereunder;
- viii. to the extent not otherwise included in any other paragraph of this Section 1, all other general intangibles, including tax refunds, rights to payment or performance, chooses in action and judgments taken on any rights or claims included in the Collateral;
- ix. all books, records, ledger cards, files, correspondence, computer programs, tapes, disks and related data processing software that at any time evidence or contain information relating to any of the Collateral or are otherwise necessary or helpful in the collection thereof or realization thereupon; and
- x. to the extent not covered by Sections 2.1(a) through 2.1(i), all other personal property of such Grantor, all proceeds, products, rents and profits of or from any and all of the foregoing Collateral and, to the extent not otherwise included, all payments under insurance (whether or not Secured Party is the loss payee thereof), or any indemnity, warranty or guaranty, payable by reason of loss or damage to or otherwise with respect to any of the foregoing Collateral. For purposes of this Agreement, the term "**proceeds**" means all proceeds as such term is defined in the UCC, and shall include, without limitation, whatever is receivable or received when

Collateral or proceeds are sold, exchanged, collected or otherwise disposed of, whether such disposition is voluntary or involuntary.

b. **Certain Limited Exclusions.** Notwithstanding anything herein to the contrary, (a) in no event shall the Collateral include, and no Grantor shall be deemed to have granted a security interest in, any of such Grantor's rights or interests in any license, contract or agreement to which such Grantor is a party or any of its rights or interests thereunder, including, without limitation, with respect to any LLC Interest or any Partnership Interest, to the extent, but only to the extent, that such a grant would, under the terms of such license, contract or agreement or otherwise, result in a breach of the terms of, or constitute a default under any license, contract or agreement to which such Grantor is a party, including, without limitation, with respect to any LLC Interest or any Partnership Interest (other than to the extent that any such term would be rendered ineffective pursuant to Section 9-318(4) of the Uniform Commercial Code of any relevant jurisdiction or any other applicable law (including the United States Bankruptcy Code) or principles of equity) unless the consent of the other party thereto has been obtained to such grant of a security interest; provided, immediately upon the ineffectiveness, lapse or termination of any such provision, the Collateral shall include, and such Grantor shall be deemed to have granted a security interest in, all such rights and interests, including, without limitation, with respect to any LLC Interest or any Partnership Interest, as if such provision had never been in effect and (b) only the outstanding capital stock of a controlled foreign corporation possessing up to but not exceeding 65% of the voting power of all classes of capital stock of such controlled foreign corporation entitled to vote shall be deemed to be pledged hereunder.

c. **Definitions; Interpretation.** Capitalized terms used herein (including the preamble and recitals hereto) and not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement or, if not defined therein, in the UCC. References to "Sections", "Exhibits" and "Schedules" shall be to Sections, Exhibits and Schedules, as the case may be, of this Agreement unless otherwise specifically provided. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect. The rules of construction set forth in Section 1.3 of the Credit Agreement shall be applicable to this Agreement mutatis mutandis. If any conflict or inconsistency exists between this Agreement and the Credit Agreement, the Credit Agreement shall govern.

2. SECURITY FOR OBLIGATIONS; GRANTORS REMAIN LIABLE

- a. **Security for Obligations.** This Agreement secures, and the Collateral is collateral security for, the prompt payment or performance in full when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including the payment of amounts that would become due but for the operation of the United States Bankruptcy Code), of all Obligations (as such term is defined in the Credit Agreement) with respect to each Grantor (the "**Secured Obligations**").
- b. **Grantors Remain Liable.** Anything contained herein to the contrary notwithstanding, (a) each Grantor shall remain liable under any Partnership Agreement, LLC Agreement or any other contracts and agreements included in the Collateral, to the extent set forth therein, to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed; (b) the exercise by Secured Party of any of its rights hereunder shall not release any Grantor from any of its duties or obligations under the contracts and agreements included in the Collateral; and (c) Secured Party shall not have any obligation or liability under any Partnership Agreement, LLC Agreement or any other contracts and agreements included in the Collateral by reason of this Agreement, nor shall Secured Party be obligated to perform any of the obligations or duties of any Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder. Notwithstanding any of the foregoing, this Agreement shall not in any way be deemed to obligate Secured Party, any other Agent, any Lender or any purchaser at a foreclosure sale under this Agreement to assume any of any Grantor's obligations, duties, expenses or liabilities under any LLC Agreement or Partnership Agreement (including any Grantor's obligations as a general partner for the debts and obligations of a Partnership) and to manage the business and affairs of any Partnership or any of such Grantor's obligations for the debts and obligations of an LLC, or under any and all other agreements now existing or hereafter drafted or executed (collectively, the "**Grantor Obligations**") unless Secured Party, any other Agent, any Lender or any such purchaser otherwise expressly agrees in writing to assume any or all of said Grantor Obligations. In the event of foreclosure by Secured Party, each Grantor shall remain bound and obligated to perform its Grantor Obligations arising during or otherwise related to its ownership of the Collateral, and neither Secured Party, nor any other Agent nor any Lender shall be deemed to have assumed any of such Grantor Obligations except as provided in the preceding sentence. Without limiting the generality of the foregoing, neither the grant of the security interest in the Collateral in favor of Secured Party as provided herein nor the exercise by Secured

Party of any of its rights hereunder nor any action in connection with a foreclosure on the Collateral shall be deemed to constitute Secured Party, any other Agent, or any Lender a partner of any Partnership or a member of any LLC; provided, in the event Secured Party or any purchaser of Collateral at a foreclosure sale elects to become a substituted general partner of any Partnership or manager of any LLC in place of any Grantor, Secured Party or such purchaser, as the case may, shall adopt in writing the applicable Partnership Agreement or LLC Agreement, as the case may be, and agree to be bound by the terms and provisions thereof.

3. REPRESENTATIONS AND WARRANTIES

- a. **Generally.** Each Grantor represents and warrants that each of the representations and warranties set forth in Section 3.9 of the Credit Agreement is true and correct with respect to each item of Collateral applicable thereto owned by such Grantor as if fully set forth herein. In addition to the foregoing, except with respect to any Permitted Lien and such as may have been filed in favor of Secured Party as set forth on Schedule 3.1 hereof, no effective UCC financing statement, fixture filing or other instrument similar in effect covering all or any part of the Collateral is on file in any filing or recording office (other than filings for which UCC-3 termination statements or other documents as reasonably requested by Secured Party have been executed and delivered to Secured Party on or prior to the date hereof).
- b. **Investment Property.** In addition to any other representation made thereby in any other Credit Document, each Grantor represents and warrants that (a) with respect to Subsidiaries of a Grantor, all of the Pledged Stock has been duly authorized and validly issued and are fully paid and non-assessable; (b) the Pledged Interests constitute all (or such lesser percentage owned by such Grantor as permitted under the Credit Agreement) of the issued and outstanding equity Securities of each issuer thereof that are owned by such Grantor and with respect to Subsidiaries of a Grantor, there are no outstanding warrants, options or other rights to purchase, or other agreements outstanding with respect to, or property that is now or hereafter convertible into, or that requires the issuance or sale of, any of the Pledged Interests that would result in the Grantor owning less than the minimum percentage of the issued and outstanding equity Securities of such issuer as permitted by the Credit Agreement; (c) with respect to Subsidiaries of a Grantor, all of the Pledged Debt has been duly authorized, authenticated or issued, and delivered and is the legal, valid and binding obligation of the issuers thereof and is not in default and constitutes all of the issued and outstanding inter company Indebtedness evi-

denced by a promissory note of the respective issuers thereof owing to such Grantor; (d) the Secured Party has been registered as the registered owner on the books and records of any issuer of Uncertificated Securities included in the Collateral or the Secured Party otherwise has "control" thereof (as defined in the UCC); (e) no Partnership Interest or LCC Interest constitutes Uncertificated Securities; (f) with respect to any Partnership Interests or LLC Interests that constitute "securities" (as such term is defined in the UCC), such Partnership Interests or LLC Interests, as the case may be, are evidenced by certificates and such certificates have been delivered to the Secured Party in accordance with Section 5.2 hereof; and (g) with respect to Subsidiaries of a Grantor, with respect to any Investment Property, no consent of any Person, including any other limited or general partner of the Partnerships, any other member of any LLC, or any creditor of any Grantor, and no authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for either (i) the grant by any Grantor of the security interests granted hereby, (ii) the execution, delivery or performance of this Agreement by any Grantor, or (iii) the perfection of or the exercise by Secured Party of its rights and remedies hereunder (except as may have been taken by or at the direction of any Grantor).

- c. Intellectual Property Collateral.** In addition to any other representation made thereby in any other Credit Document, each Grantor represents and warrants that (a) a true and complete list of all Trademark registrations and applications owned, held (whether pursuant to a license or otherwise) or used by such Grantor, in whole or in part, as of the date of this Agreement is set forth in Schedule 1.1(b); (b) a true and complete list of all Patents and applications owned, held (whether pursuant to a license or otherwise) or used by such Grantor, in whole or in part, as of the date of this Agreement is set forth in Schedule 1.1(b); (c) a true and complete list of all Copyright registrations and applications held (whether pursuant to a license or otherwise) or used by such Grantor, in whole or in part, as of the date of this Agreement is set forth in Schedule 1.1(b); (d) there are not any pending or, to the best of such Grantor's knowledge, any threatened claims by any third party that any of the Intellectual Property owned, held or used by such Grantor is invalid or unenforceable and, if adversely determined, would reasonably be expected to have a Material Adverse Effect; and (e) except as set forth on Schedule 3.3, no security interest or other Lien covering all or any part of the Intellectual Property is on file in the United States Patent and Trademark Office, the United States Copyright Office or in any state registry.
- d. Location of Equipment and Inventory.** In addition to the representations and warranties made thereby in any other Credit Document, each Grantor represents

and warrants that all of the Equipment and Inventory is, as of the date hereof, located at the addresses specified in Schedule 3.4.

e. **Office Locations; Other Names.** In addition to the representations and warranties made thereby in any other Credit Document, each Grantor represents and warrants that as of the date hereof the chief place of business, the chief executive office and the office where such Grantor keeps its records regarding the Accounts and all originals of all chattel paper that evidence Accounts is, and has been for the four month period preceding the date hereof, located at the places indicated on Schedule 3.5, and no Grantor has in the past twelve months, and does not now do, business under any other name (including any trade-name or fictitious business name) except for those names set forth on Schedule 3.5.

4. **FURTHER ASSURANCES; ADDITIONAL GRANTORS**

a. **Generally.** Each Grantor agrees that from time to time, at the expense of Grantor, each Grantor will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that Secured Party may reasonably request, in order to perfect and protect any security interest granted or purported to be granted hereby or to enable Secured Party to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, each Grantor will (a) execute and file such financing or continuation statements, or amendments thereto, and such other instruments or notices, as may be necessary, or as Secured Party may reasonably request, in order to perfect and preserve the security interests granted or purported to be granted hereby, including but not limited to recordation with the appropriate intellectual property registry, including the United States Patent and Trademark Office, the United States Copyright Office, the Secretaries of State and the foreign counterparts of any of the foregoing; (b) at any reasonable time, upon request by Secured Party, exhibit the Collateral to and allow inspection of the Collateral by Secured Party, or persons designated by Secured Party; and (c) at Secured Party's request, appear in and defend any action or proceeding that may affect Grantor's title to or Secured Party's security interest in all or any part of the Collateral. Each Grantor hereby authorizes Secured Party to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral without the signature of Grantor. Each Grantor agrees that a carbon, photographic or other reproduction of this Agreement or of a financing statement signed by Grantor shall be sufficient as a financing statement and may be filed as a financing statement in any and all jurisdictions. Each Grantor will furnish to Secured Party from time to time statements and schedules further identifying and describing the Collateral and

such other reports in connection with the Collateral as Secured Party may reasonably request, all in reasonable detail.

- b. **Investment Property.** (a) Each Grantor agrees that it will, upon obtaining any additional shares of stock or other securities required to be pledged hereunder, promptly (and in any event within five Business Days) deliver to Secured Party a Pledge Supplement, duly executed by Grantor, in substantially the form of Exhibit A (a "**Pledge Supplement**"), in respect of the additional pledged shares to be pledged pursuant to this Agreement. Each Grantor hereby authorizes Secured Party to attach each Pledge Supplement to this Agreement and agrees that all Pledged Stock of Grantor listed on any Pledge Supplement shall for all purposes hereunder be considered Collateral of Grantor; provided, the failure of any Grantor to execute a Pledge Supplement with respect to any additional Pledged Stock pledged pursuant to this Agreement shall not impair the security interest of Secured Party therein or otherwise adversely affect the rights and remedies of Secured Party hereunder with respect thereto.

(b) Upon the request of the Secured Party, each Grantor shall cause each Person which is an issuer of an uncertificated security included in the Collateral to execute and deliver all instruments and documents, and take all further action Secured Party may reasonably request, in order to perfect and protect any security interest granted or purported to be granted in such uncertificated securities, to establish "**control**" (as such term is defined in the UCC) by Secured Party over such Collateral or to enable Secured Party to exercise and enforce its rights and remedies hereunder with respect to such Collateral, including, and as applicable, (i) register the Secured Party as the registered owner of such uncertificated securities upon the books of such Person in accordance with Article 8 of the UCC, and (ii) deliver to Secured Party an Acknowledgment of Pledge, duly executed by such issuer of the applicable uncertificated security, in substantially the form of Exhibit B (an "**Acknowledgment of Pledge**").

- c. **Intellectual Property Collateral.** If any Grantor shall hereafter obtain rights to any new Intellectual Property, the provisions of this Agreement shall automatically apply thereto. Each Grantor shall promptly notify Secured Party in writing of any of the foregoing rights acquired by Grantor after the date hereof. Each Grantor shall execute and deliver to Secured Party and record in all places where this Agreement is recorded a Pledge Supplement, pursuant to which Grantor shall assign, pledge and transfer to Secured Party and grant to Secured Party a security interest to the extent of its interest in such Intellectual Property; provided, if, in the reasonable judgment of Grantor, after due inquiry, granting such interest would result in the grant of a Trademark registration, Patent or Copyright registration in the name of Secured Party, in which event Grantor shall give written notice to Secured Party as soon as reasonably practicable and the recordation of a Pledge Supplement shall instead be undertaken as soon as

practicable following the grant of the applicable Trademark registration, Patent or Copyright registration, as the case may be. In addition to the foregoing, each Grantor hereby authorizes Secured Party to modify this Agreement without obtaining Grantor's approval of or signature to such modification by amending Schedule 1.1(b), as applicable, to include reference to any right, title or interest in any existing Intellectual Property or any Intellectual Property acquired or developed by Grantor after the execution hereof or to delete any reference to any right, title or interest in any Intellectual Property in which Grantor no longer has or claims any right, title or interest.

- d. Accounts.** Each Grantor shall (a) mark conspicuously each item of chattel paper included in the Accounts, each Related Contract and, at the reasonable request of Secured Party, each of its records pertaining to the Collateral, with a legend, in form and substance reasonably satisfactory to Secured Party, indicating that such Collateral is subject to the security interest granted hereby, and (b) at the reasonable request of Secured Party, deliver to Secured Party hereunder all promissory notes and other instruments (excluding checks) and all original counterparts of chattel paper constituting Collateral in excess of \$25,000, duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance reasonably satisfactory to Secured Party.
- e. Equipment.** Each Grantor shall (a) promptly after the acquisition by such Grantor of any material item of Equipment which is covered by a certificate of title under a statute of any jurisdiction under the law of which indication of a security interest on such certificate is required as a condition of perfection thereof, upon the reasonable request of Secured Party, execute and file with the registrar of motor vehicles or other appropriate authority in such jurisdiction an application or other document requesting the notation or other indication of the security interest created hereunder on such certificate of title, and (b) upon the reasonable request of Secured Party, deliver to Secured Party copies of all such applications or other documents filed during such calendar quarter and copies of all such certificates of title issued during such calendar quarter indicating the security interest created hereunder in the items of Equipment covered thereby.
- f. Additional Grantors.** From time to time subsequent to the date hereof, additional Persons may become parties hereto as additional Grantors (each, an "**Additional Grantor**"), by executing a Counterpart Agreement. Upon delivery of any such Counterpart Agreement to Secured Party, notice of which is hereby waived by Grantors, each Additional Grantor

shall be a Grantor and shall be as fully a party hereto as if Additional Grantor were an original signatory hereto. Each Grantor expressly agrees that its obligations arising hereunder shall not be affected or diminished by the addition or release of any other Grantor hereunder, nor by any election of Secured Party not to cause any Subsidiary of Borrower to become an Additional Grantor hereunder. This Agreement shall be fully effective as to any Grantor that is or becomes a party hereto regardless of whether any other Person becomes or fails to become or ceases to be a Grantor hereunder.

5. COVENANTS OF GRANTORS

- a. **Generally.** Each Grantor shall (a) except for the security interest created by this Agreement, not create or suffer to exist any Lien upon or with respect to any of the Collateral, except Permitted Liens; (b) not use or permit any Collateral to be used unlawfully or in violation of any provision of this Agreement or any applicable statute, regulation or ordinance or any policy of insurance covering the Collateral; (c) notify Secured Party of any change in Grantor's name, identity or corporate structure within 15 days of such change; (d) diligently keep reasonable records respecting the Intellectual Property Collateral and at all times keep at least one complete set of its records concerning such Collateral at its chief executive office or principal place of business; (e) pay promptly when due all property and other taxes, assessments and governmental charges or levies imposed upon, and all claims (including claims for labor, materials and supplies) against, the Collateral, except to the extent the validity thereof is being contested in good faith; provided, Grantor shall in any event pay such taxes, assessments, charges, levies or claims not later than five days prior to the date of any proposed sale under any judgment, writ or warrant of attachment entered or filed against Grantor or any of the Collateral as a result of the failure to make such payment; and (f) upon any executive officer of such Grantor obtaining knowledge thereof, promptly notify Secured Party in writing of any event that may materially and adversely affect the ability of Grantor or Secured Party to dispose of the Collateral or any portion thereof, or the rights and remedies of Secured Party in relation thereto, including, without limitation, the levy of any legal process against the Collateral or any portion thereof. No Grantor shall sell, transfer or assign (by operation of law or otherwise) any Collateral except as permitted by Section 6.9 of the Credit Agreement (a "**Permitted Sale**"). So long as (i) no Event of Default shall have occurred and is then continuing or would occur after giving effect to a Permitted Sale, and (ii) the Net Asset Sale Proceeds with respect to such Permitted Sale are delivered to Secured Party contemporaneously with such Permitted Sale to the extent required by Section 2.14(a) of the Credit Agreement, Secured Party shall release the Lien hereof encumbering the Collateral that is the subject of such

Permitted Sale. Secured Party shall execute each and every appropriate filing statement and/or recording document reasonably requested by any Grantor in connection with the foregoing. Any reasonable expense or cost incurred by Secured Party in connection with any such release shall be for the account of the applicable Grantor.

b. Investment Property.

i. Delivery.

- (1) All certificates or instruments representing or evidencing the Investment Property shall be delivered to and held by or on behalf of Secured Party pursuant hereto and shall be in suitable form for transfer by delivery or, as applicable, shall be accompanied by Grantor's endorsement, where necessary, or duly executed instruments of transfer or assignment in blank, all in form and substance satisfactory to Secured Party. Upon the occurrence and during the continuation of an Event of Default, Secured Party shall have the right, without notice to any Grantor, to transfer to or to register in the name of Secured Party or any of its nominees any or all of the Investment Property, subject only to the revocable rights specified herein. In addition, Secured Party shall have the right at any time to exchange certificates or instruments representing or evidencing Investment Property for certificates or instruments of smaller or larger denominations.
- (2) Each Grantor hereby consents to the pledge of the Partnership Interests by each other Grantor in each Partnership pursuant to the terms hereof, and, subject to Section 8, to the transfer of such Partnership Interests to Secured Party or its nominee and to the substitution of Secured Party or its nominee as a substituted Partner of each such Partnership with all the rights, powers and duties of a general partner or a limited partner, as the case may be.
- (3) Each Grantor hereby consents to the pledge of the LLC Interests by each other Grantor in each LLC pursuant to the terms hereof, and, subject to Section 7, to the transfer of such LLC Interests to Secured Party or its nominee and to the substitution of Secured Party or its nominee as a substituted member of the LLC with all the rights, powers and duties of a member of the LLC in question.

- ii. Covenants. Each Grantor shall (i) not permit any issuer of Pledged Stock to merge or consolidate unless all (or such lesser percentage owned by such Grantor prior to such merger or consolidation) the outstanding capital stock of the surviving or resulting corporation is, upon such merger or consolidation, pledged hereunder and no cash, securities or other property is distributed in respect of the outstanding shares of any other constituent corporation; provided, if the surviving or resulting corporation upon any such merger or consolidation involving an issuer of Pledged Stock which is a controlled foreign corporation is a controlled foreign corporation, then such Grantor shall only be required to pledge outstanding capital stock of such surviving or resulting corporation possessing up to but not exceeding 65% of the voting power of all classes of capital stock of such issuer entitled to vote; (ii) cause each issuer of Pledged Stock that is a Subsidiary of a Grantor not to issue any stock or other securities in addition to or in substitution for the Pledged Stock issued by such issuer, except to Grantor; (iii) promptly deliver to Secured Party notice of the conversion of any partnership interests in a Partnership any membership interests in a LLC to certificated form; (iv) not (1) cancel or terminate any of the Partnership Agreements or LLC Agreements or consent to or accept any cancellation or termination thereof, (2) except as permitted pursuant to Section 6.10 of the Credit Agreement, sell, assign (by operation of law or otherwise) or otherwise dispose of any part of its limited or general partnership interest in any of the Partnerships or its membership interest in any of the LLCs, (3) amend, supplement or otherwise modify any of the Partnership Agreements or any of the LLC Agreements (as in effect on the date hereof), (4) waive any default under or breach of any of the Partnership Agreements or any of the LLC Agreements or waive, fail to enforce, forgive or release any right, interest or entitlement of any kind, howsoever arising, under or in respect of any of the Partnership Agreements or any of the LLC Agreements or vary or agree to the variation in any respect of any of the provisions of any of the Partnership Agreements or any of the LLC Agreements or the performance of any other Person under any of the Partnership Agreements or any of the LLC Agreements, or (5) petition, request or take any other legal or administrative action which seeks, or may reasonably be expected, to rescind, to terminate or to suspend any of the Partnership Agreements or any of the LLC Agreements or to amend or modify any of the Partnership Agreements or any of the LLC Agreements; (v) at its expense (1) perform and comply in all material respects with all terms and provisions of the Partnership Agreements and the LLC Agreements required to be performed or complied with by it, (2) maintain the Partnership Agreements and the LLC Agreements to which it is a party in full force and effect, and (3) enforce each of the Partnership Agreements and each of the LLC

Agreements to which it is a party in accordance with its terms; and (vi) not vote to permit the Partnerships or the LLCs that are Subsidiaries to enter into any transaction of merger or consolidation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution).

iii. Voting and Distributions.

- (1) So long as no Event of Default shall have occurred and be continuing, (1) each Grantor shall be entitled to exercise any and all voting and other consensual rights pertaining to the Investment Property or any part thereof for any purpose not inconsistent with the terms of this Agreement or any Credit Document; provided, no Grantor shall exercise or refrain from exercising any such right if Secured Party shall have notified Grantor that, in Secured Party's reasonable judgment, such action would violate the terms and conditions of the Credit Agreement; provided further, it is understood, however, that neither (A) the voting by Grantor of any Pledged Stock for or Grantor's consent to the election of directors at a regularly scheduled annual or other meeting of stockholders or with respect to incidental matters at any such meeting, nor (B) Grantor's consent to or approval of any action otherwise permitted under this Agreement or any Credit Document shall be deemed inconsistent with the terms of this Agreement or any Credit Document within the meaning of this Section, and no notice of any such voting or consent need be given to Secured Party;
- (2) Grantor shall be entitled to receive and retain, and to utilize free and clear of the lien of this Agreement, any and all dividends and interest paid in respect of the Investment Property; provided, any and all (A) dividends and interest paid or payable other than in cash in respect of, and instruments and other property received, receivable or otherwise distributed in respect of, or in exchange for, any Investment Property, (B) dividends and other distributions paid or payable in cash in respect of any Investment Property in connection with a partial or total liquidation or dissolution or in connection with a reduction of capital, capital surplus or paid-in-surplus, and (C) cash paid, payable or otherwise distributed in respect of principal or in redemption of or in exchange for any Investment Property, shall be, and shall forthwith be delivered to Secured Party to hold as Investment Property and shall, if received by Grantor, be received in trust for the benefit of Secured Party, be segregated from the other property or funds of Grantor and be forthwith delivered to Secured Party as Investment Property in the same form as so received (with all necessary endorsements); and

(3) Secured Party shall promptly execute and deliver (or cause to be executed and delivered) to Grantor all such proxies, dividend payment orders and other instruments as Grantor may from time to time reasonably request for the purpose of enabling Grantor to exercise the voting and other consensual rights when and to the extent which it is entitled to exercise the same pursuant to clause (1) above and to receive the dividends, principal or interest payments which it is authorized to receive and retain pursuant to clause (2) above.

(2) Upon the occurrence and during the continuation of an Event of Default, (1) upon written notice from Secured Party to any Grantor, all rights of Grantor to exercise the voting and other consensual rights which it would otherwise be entitled to exercise pursuant hereto shall cease, and all such rights shall thereupon become vested in Secured Party who shall thereupon have the sole right to exercise such voting and other consensual rights; (2) all rights of Grantor to receive the dividends and interest payments which it would otherwise be authorized to receive and retain pursuant hereto shall cease, and all such rights shall thereupon become vested in Secured Party who shall thereupon have the sole right to receive and hold as Investment Property such dividends and interest payments; and (3) all payments which are received by Grantor contrary to the provisions of clause (2) above shall be received in trust for the benefit of Secured Party, shall be segregated from other funds of Grantor and shall forthwith be paid over to Secured Party as Investment Property in the same form as so received (with any necessary endorsements); and (4) all rights of such Grantor to receive any and all payments under or in connection with the Partnership Agreements and/or the LLC Agreements, including but not limited to the profits, dividends, and other distributions which it would otherwise be authorized to receive and retain pursuant hereto, shall cease, and all such rights shall thereupon become vested in Secured Party who shall thereupon have the sole right to receive and hold such payments as collateral.

(3) IN ORDER TO PERMIT SECURED PARTY TO EXERCISE THE VOTING AND OTHER CONSENSUAL RIGHTS WHICH IT MAY BE ENTITLED TO EXERCISE PURSUANT HERETO AND TO RECEIVE ALL DIVIDENDS AND OTHER DISTRIBUTIONS WHICH IT MAY BE ENTITLED TO RECEIVE HEREUNDER, (1) GRANTOR SHALL PROMPTLY EXECUTE AND DELIVER (OR CAUSE TO BE EXECUTED

AND DELIVERED) TO SECURED PARTY ALL SUCH PROXIES, DIVIDEND PAYMENT ORDERS AND OTHER INSTRUMENTS AS SECURED PARTY MAY FROM TIME TO TIME REASONABLY REQUEST, AND (2) WITHOUT LIMITING THE EFFECT OF CLAUSE (1) ABOVE, GRANTOR HEREBY GRANTS TO SECURED PARTY AN IRREVOCABLE PROXY (BEING COUPLED WITH AN INTEREST) TO VOTE THE PLEDGED STOCK AND TO EXERCISE ALL OTHER RIGHTS, POWERS, PRIVILEGES AND REMEDIES TO WHICH A HOLDER OF THE PLEDGED STOCK WOULD BE ENTITLED (INCLUDING GIVING OR WITHHOLDING WRITTEN CONSENTS OF SHAREHOLDERS, CALLING SPECIAL MEETINGS OF SHAREHOLDERS AND VOTING AT SUCH MEETINGS), WHICH PROXY SHALL BE EFFECTIVE, AUTOMATICALLY AND WITHOUT THE NECESSITY OF ANY ACTION (INCLUDING ANY TRANSFER OF ANY PLEDGED STOCK ON THE RECORD BOOKS OF THE ISSUER THEREOF) BY ANY OTHER PERSON (INCLUDING THE ISSUER OF THE PLEDGED STOCK OR ANY OFFICER OR AGENT THEREOF), UPON THE OCCURRENCE AND DURING THE CONTINUATION OF AN EVENT OF DEFAULT, AND WHICH PROXY SHALL ONLY TERMINATE UPON THE PAYMENT IN FULL OF THE SECURED OBLIGATIONS.

c. Intellectual Property Collateral.

- i. Covenants. Each Grantor shall (i) hereafter use best efforts so as not to permit the inclusion in any contract to which it hereafter becomes a party of any provision that could or might in any way materially impair or prevent the creation of a security interest in, or the assignment of, Grantor's rights and interests in any property included within the definitions of any Intellectual Property Collateral acquired under such contracts; (ii) take all steps reasonably necessary to protect the secrecy of all Trade Secrets relating to the products and services sold or delivered under or in connection with the Intellectual Property Collateral, including, without limitation, entering into confidentiality agreements with employees and labeling and restricting access to secret information and documents; (iii) use proper statutory notice in connection with its use of any of the Intellectual Property Collateral; (iv) use consistent standards of high quality (which may be consistent with Grantor's past practices) in the manufacture, sale and delivery of products and services sold or delivered under or in connection with the Intellectual Property Collateral; and (v) furnish to Secured Party from time to time statements and schedules

further identifying and describing any Intellectual Property Collateral and such other reports in connection with such Collateral as Secured Party may reasonably request, all in reasonable detail.

ii. Collections. Except as otherwise provided in this Section 5.3, each Grantor shall continue to collect, at its own expense, all amounts due or to become due to Grantor in respect of the Intellectual Property or any portion thereof. In connection with such collections, each Grantor may take (and, at Secured Party's reasonable direction, shall take) such action as Grantor or Secured Party may deem reasonably necessary or advisable to enforce collection of such amounts; provided, Secured Party shall have the right at any time, upon the occurrence and during the continuation of an Event of Default and upon written notice to Grantor of its intention to do so, to notify the obligors with respect to any such amounts of the existence of the security interest created hereby and to direct such obligors to make payment of all such amounts directly to Secured Party, and, upon such notification and at the expense of Grantor, to enforce collection of any such amounts and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as Grantor might have done. After receipt by any Grantor of the notice from Secured Party referred to in the proviso to the preceding sentence and during the continuation of any Event of Default, (i) all amounts and proceeds (including checks and other instruments) received by Grantor in respect of amounts due to Grantor in respect of the Collateral or any portion thereof shall be received in trust for the benefit of Secured Party hereunder, shall be segregated from other funds of Grantor and shall be forthwith paid over or delivered to Secured Party in the same form as so received (with any necessary endorsement) to be held as cash Collateral, and (ii) Grantor shall not adjust, settle or compromise the amount or payment of any such amount or release wholly or partly any obligor with respect thereto or allow any credit or discount thereon.

iii. Applications and Registrations. Each Grantor shall have the duty diligently, through counsel reasonably acceptable to Secured Party, to prosecute, file and/or make, unless and until Grantor, in its commercially reasonable judgment, decides otherwise, (i) any application relating to any of the Intellectual Property owned by Grantor and identified on Schedule 1.1(b), that is pending as of the date of this Agreement, (ii) any registration on any existing or future unregistered but copyrightable works, (iii) application on any existing patent or future patentable but unpatented invention comprising Intellectual Property, and (iv) any Trademark opposition and cancellation proceedings, renew Trademark registrations and Copyright registrations and do any and all acts which are necessary or

desirable, as determined in such Grantor's commercially reasonable judgment, to preserve and maintain all rights in all Intellectual Property. Any expenses incurred in connection therewith shall be borne solely by Grantor. Subject to the foregoing, Grantor shall give Secured Party prior written notice of any abandonment of any Intellectual Property or any right to file a patent application or any pending patent application or any Patent.

iv. Litigation. Except as provided herein, each Grantor shall have the right to commence and prosecute in its own name, as real party in interest, for its own benefit and at its own expense, such suits, proceedings or other actions for infringement, unfair competition, dilution, misappropriation or other damage, or reexamination or reissue proceedings as are in its commercially reasonable judgment necessary to protect the Intellectual Property Collateral. Secured Party shall provide, at Grantor's expense, all reasonable and necessary cooperation in connection with any such suit, proceeding or action including, without limitation, joining as a necessary party. Each Grantor shall promptly, following its becoming aware thereof, notify Secured Party of the institution of, or of any adverse determination in, any proceeding (whether in the United States Patent and Trademark Office, the United States Copyright Office or any federal, state, local or foreign court) or regarding Grantor's ownership, right to use, or interest in any Intellectual Property Collateral. Grantor shall provide to Secured Party any information with respect thereto requested by Secured Party.

v. Certain Rights of Secured Party. In addition to, and not by way of limitation of, the granting of a security interest in the Collateral pursuant hereto, each Grantor, effective upon the occurrence and during the continuation of an Event of Default and upon written notice from Secured Party, shall grant, sell, convey, transfer, assign and set over to Secured Party, for its benefit and the ratable benefit of Lenders and Lender Counterparties, all of Grantor's right, title and interest in and to the Intellectual Property Collateral to the extent necessary to enable Secured Party to use, possess and realize on the Collateral and to enable any successor or assign to enjoy the benefits of the Collateral. This right and license shall inure to the benefit of Secured Party and its successors, assigns and transferees, whether by voluntary conveyance, operation of law, assignment, transfer, foreclosure, deed in lieu of foreclosure or otherwise. Such right and license shall be granted free of charge, without requirement that any monetary payment whatsoever be made to such Grantor. In addition, each Grantor hereby grants to Secured Party and its employees, representatives and agents the right to visit Grantor's and any of its Affiliate's or subcontractor's plants, facilities and other places of business that are utilized in

connection with the manufacture, production, inspection, storage or sale of products and services sold or delivered under any of the Intellectual Property Collateral (or which were so utilized during the prior six month period), and to inspect the quality control and all other records relating thereto upon reasonable advance written notice to Grantor and at reasonable dates and times and as often as may be reasonably requested. If and to the extent that any Grantor is permitted to license the Intellectual Property Collateral, Secured Party shall promptly enter into a non-disturbance agreement or other similar arrangement, at Grantor's request and expense, with Grantor and any licensee of any Intellectual Property Collateral permitted hereunder in form and substance reasonably satisfactory to Secured Party pursuant to which (i) Secured Party shall agree not to disturb or interfere with such licensee's rights under its license agreement with Grantor so long as such licensee is not in default thereunder, and (ii) such licensee shall acknowledge and agree that the Intellectual Property Collateral licensed to it is subject to the security interest created in favor of Secured Party and the other terms of this Agreement.

d. Equipment and Inventory. Each Grantor shall:

- i. keep the Equipment and Inventory in the jurisdictions specified on Schedule 3.4 or, upon 30 days' written notice to Secured Party, in such other jurisdictions where all action that Secured Party may reasonably request, in order to perfect and protect any security interest granted or purported to be granted hereby, or to enable Secured Party to exercise and enforce its rights and remedies hereunder, with respect to such Equipment and Inventory shall have been taken but no Grantor shall be required to obtain a Lessor Waiver and Consent Agreement except to the extent required under Section 5.8 of the Credit Agreement;
- ii. provide information as to the kind, type and quantity of Inventory, such Grantor's cost therefor and (where applicable) the current list prices for the Inventory, in each case, in reasonable detail; and
- iii. if any Inventory is in possession or control of any of such Grantor's agents or processors, upon the occurrence and during the continuance of an Event of Default, instruct such agent or processor to hold all such Inventory for the account of Secured Party and subject to the instructions of Secured Party.

e. **Accounts and Related Contracts.** Each Grantor shall:

- i. keep its chief place of business and chief executive office and the office where it keeps its records concerning the Accounts and Related Contracts, and all originals of all chattel paper that evidence Accounts, at the location therefor specified on Schedule 3.5 or, upon 30 days' written notice to Secured Party following any change in location, at such other location in a jurisdiction where all action that Secured Party may request, in order to perfect and protect any security interest granted or purported to be granted hereby, or to enable Secured Party to exercise and enforce its rights and remedies hereunder, with respect to such Accounts and Related Contracts shall have been taken. Promptly upon the reasonable request of Secured Party, such Grantor shall deliver to Secured Party complete and correct copies of each Related Contract;
- ii. maintain (i) complete and accurate records of all Accounts, including records of all payments received, credits granted and merchandise returned, and (ii) all documentation relating thereto in accordance with prudent business practices;
- iii. except as otherwise provided in this subsection (c), continue to collect, at its own expense, all amounts due or to become due to such Grantor under the Accounts and Related Contracts, and in connection with such collections, such Grantor shall take such action (unless the Grantor has determined in the exercise of its commercially reasonable judgment that it shall not do so) as such Grantor or Secured Party may deem necessary or advisable to enforce collection of amounts due or to become due under the Accounts; provided, Secured Party shall have the right at any time, upon the occurrence and during the continuation of an Event of Default and upon written notice to such Grantor of its intention to do so, to notify the account debtors or obligors under any Accounts of the assignment of such Accounts to Secured Party and to direct such account debtors or obligors to make payment of all amounts due or to become due to such Grantor thereunder directly to Secured Party, to notify each Person maintaining a lockbox or similar arrangement to which account debtors or obligors under any Accounts have been directed to make payment to remit all amounts representing collections on checks and other payment items from time to time sent to or deposited in such lockbox or other arrangement directly to Secured Party and, upon such notification and at the expense of such Grantor, to enforce collection of any such Accounts and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as such Grantor might have done. After receipt by any Grantor of the notice from Secured Party referred to in the

proviso to the preceding sentence, (i) any payments of Accounts, received by such Grantor shall be forthwith (and in any event within two Business Days) deposited by such Grantor in the exact form received, duly indorsed by such Grantor to the Secured Party if required, in a collateral account maintained under the sole dominion and control of the Secured Party (the "Collateral Account"), (ii) until so turned over in accordance with the preceding subsection (i) all amounts and proceeds (including checks and other instruments) received by such Grantor in respect of the Accounts and the Related Contracts shall be received in trust for the benefit of Secured Party hereunder and shall be segregated from other funds of such Grantor and (iii) such Grantor shall not adjust, settle or compromise the amount or payment of any Account, or release wholly or partly any account debtor or obligor thereof, or allow any credit or discount thereon.

6. SECURED PARTY APPOINTED ATTORNEY-IN-FACT

Each Grantor hereby irrevocably appoints Secured Party (such appointment being coupled with an interest) as Grantor's attorney-in-fact, with full authority in the place and stead of Grantor and in the name of Grantor, Secured Party or otherwise, from time to time in Secured Party's discretion to take any action and to execute any instrument that Secured Party may deem reasonably necessary or advisable to accomplish the purposes of this Agreement, including (a) to prepare, sign and file any Uniform Commercial Code financing statements in the name of the Grantor as debtor; (b) to prepare, sign, and file for recordation in any intellectual property registry, appropriate evidence of the lien and security interest granted herein in the Intellectual Property Collateral in the name of Grantor as assignor; (c) to obtain and adjust insurance required to be maintained by Grantor or paid to Secured Party pursuant to the Credit Agreement; (d) upon the occurrence and during the continuation of any Event of Default, to ask for, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral; (e) upon the occurrence and during the continuation of any Event of Default, to receive, endorse and collect any drafts or other instruments, documents and chattel paper in connection with clause (d) above; (f) upon the occurrence and during the continuation of any Event of Default, to file any claims or take any action or institute any proceedings that Secured Party may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of Secured Party with respect to any of the Collateral; (g) to pay or discharge taxes or Liens (other than Liens permitted under this Agreement or the Credit Agreement) levied or placed upon or threatened against the Collateral, the legality or validity thereof and the amounts necessary to discharge the same to be determined by Secured Party in its sole discretion, any such payments made by Secured Party to become Secured Obligations of Grantor to Secured Party, due and payable immediately without demand; and (h) upon the occurrence and during the continuation of an Event of Default, generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though Secured Party were the absolute owner

thereof for all purposes, and to do, at Secured Party's option and Grantor's expense, at any time or from time to time, all acts and things that Secured Party deems reasonably necessary to protect, preserve or realize upon the Collateral and Secured Party's security interest therein in order to effect the intent of this Agreement, all as fully and effectively as Grantor might do.

7. REMEDIES

- a. **Generally.** If any Event of Default shall have occurred and be continuing, Secured Party may exercise in respect of the Collateral, in addition to all other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party on default under the UCC (whether or not the UCC applies to the affected Collateral), and also may (a) require any Grantor to, and each Grantor hereby agrees that it will at its expense and promptly upon request of Secured Party forthwith, assemble all or part of the Collateral as directed by Secured Party and make it available to Secured Party at a place to be designated by Secured Party that is reasonably convenient to both parties; (b) enter onto the property where any Collateral is located and take possession thereof with or without judicial process; (c) prior to the disposition of the Collateral, store, process, repair or recondition the Collateral or otherwise prepare the Collateral for disposition in any manner to the extent Secured Party deems appropriate; (d) without notice except as specified below, sell the Collateral or any part thereof in one or more parcels at public or private sale, at any of Secured Party's offices or elsewhere, for cash, on credit or for future delivery, at such time or times and at such price or prices and upon such other terms as Secured Party may deem commercially reasonable; and (e) exercise dominion and control over, and refuse to permit further withdrawals (whether of money, securities, instruments or other property) from any deposit account maintained with Secured Party constituting part of the Collateral. Secured Party or any Lender may be the purchaser of any or all of the Collateral at any such sale and Secured Party, as agent for and representative of Lenders and Lender Counterparties (but not any Lender or Lenders in its or their respective individual capacities unless Requisite Lenders shall otherwise agree in writing), shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Secured Obligations as a credit on account of the purchase price for any Collateral payable by Secured Party at such sale. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of any Grantor, and each Grantor hereby waives (to the extent permitted by applicable law) all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. Each Grantor agrees that, to the extent notice of sale shall be required by law, at least ten days' notice to Grantor of the time and place of any public sale or

the time after which any private sale is to be made shall constitute reasonable notification. Secured Party shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. Secured Party may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Grantor hereby waives any claims against Secured Party arising by reason of the fact that the price at which any Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if Secured Party accepts the first offer received and does not offer such Collateral to more than one offeree. If the proceeds of any sale or other disposition of the Collateral are insufficient to pay all the Secured Obligations, Grantors shall be liable for the deficiency and the fees of any attorneys employed by Secured Party to collect such deficiency. Each Grantor further agrees that a breach of any of the covenants contained in this Section will cause irreparable injury to Secured Party, that Secured Party has no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section shall be specifically enforceable against Grantor, and Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no default has occurred giving rise to the Secured Obligations becoming due and payable prior to their stated maturities. Nothing in this Section shall in any way alter the rights of Secured Party hereunder.

- b. Investment Property.** Each Grantor recognizes that, by reason of certain prohibitions contained in the Securities Act and applicable state securities laws, Secured Party may be compelled, with respect to any sale of all or any part of the Investment Property conducted without prior registration or qualification of such Investment Property under the Securities Act and/or such state securities laws, to limit purchasers to those who will agree, among other things, to acquire the Investment Property for their own account, for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges that any such private sales may be at prices and on terms less favorable than those obtainable through a public sale without such restrictions (including a public offering made pursuant to a registration statement under the Securities Act) and, notwithstanding such circumstances each Grantor agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner and that Secured Party shall have no obligation to engage in public sales and no obligation to delay the sale of any Investment Property for the period of time necessary to permit the issuer thereof to register it for a form of public sale requiring registration under the Securities Act or under applicable state securities laws, even if such issuer would, or should, agree to so register it. If Secured Party determines to exercise its right to sell

any or all of the Investment Property, upon written request, each Grantor shall and shall cause each issuer of any Pledged Stock to be sold hereunder, each Partnership and each LLC from time to time to furnish to Secured Party all such information as Secured Party may request in order to determine the number and nature of interest, shares or other instruments included in the Investment Property which may be sold by Secured Party in exempt transactions under the Securities Act and the rules and regulations of the Securities and Exchange Commission thereunder, as the same are from time to time in effect.

c. Intellectual Property Collateral.

- i. Anything contained herein to the contrary notwithstanding, upon the occurrence and during the continuation of an Event of Default,
- (i) Secured Party shall have the right (but not the obligation) to bring suit, in the name of any Grantor, Secured Party or otherwise, in Secured Party's sole discretion, to enforce any Intellectual Property, in which event Grantor shall, at the request of Secured Party, do any and all lawful acts and execute any and all documents required by Secured Party in aid of such enforcement and Grantor shall promptly, upon demand, reimburse and indemnify Secured Party as provided in Section 11 hereof in connection with the exercise of its rights under this Section, and, to the extent that Secured Party shall elect not to bring suit to enforce any Intellectual Property as provided in this Section, each Grantor agrees to use all reasonable measures, whether by action, suit, proceeding or otherwise, to prevent the infringement of any of the Intellectual Property by others and for that purpose agrees (based on its reasonable business judgment) to diligently maintain any action, suit or proceeding against any Person so infringing necessary to prevent such infringement;
 - (ii) upon written demand from Secured Party, each Grantor shall execute and deliver to Secured Party an assignment or assignments of the Intellectual Property and such other documents as are necessary or appropriate to carry out the intent and purposes of this Agreement;
 - (iii) each Grantor agrees that such an assignment and/or recording shall be applied to reduce the Secured Obligations outstanding only to the extent that Secured Party (or any Lender) receives cash proceeds in respect of the sale of, or other realization upon, the Intellectual Property; and
 - (iv) within five Business Days after written notice from Secured Party, each Grantor shall make available to Secured Party, to the extent within such Grantor's power and authority, such personnel in each Grantor's employ on the date of such Event of Default as Secured Party may reasonably designate, by name, title or job responsibility, to permit such Grantor to continue, directly or indirectly, to produce, advertise and sell the products and services sold or delivered by such

Grantor under or in connection with the Trademarks, such persons to be available to perform their prior functions on Secured Party's behalf and to be compensated by Secured Party at such Grantor's expense on a per diem, pro-rata basis consistent with the salary and benefit structure applicable to each as of the date of such Event of Default.

- ii. If (i) an Event of Default shall have occurred and, by reason of cure, waiver, modification, amendment or otherwise, no longer be continuing, (ii) no other Event of Default shall have occurred and be continuing, (iii) an assignment to Secured Party of any rights, title and interests in and to the Intellectual Property shall have been previously made and shall have become absolute and effective, and (iv) the Secured Obligations shall not have become immediately due and payable, upon the written request of Grantor, Secured Party shall promptly execute and deliver to Grantor, at Grantor's sole cost and expense, such assignments as may be necessary to reassign to Grantor any such rights, title and interests as may have been assigned to Secured Party as aforesaid, subject to any disposition thereof that may have been made by Secured Party; provided, after giving effect to such reassignment, Secured Party's security interest granted pursuant hereto, as well as all other rights and remedies of Secured Party granted hereunder, shall continue to be in full force and effect; and provided further, the rights, title and interests so reassigned shall be free and clear of all Liens other than Permitted Liens.

- d. **Accounts.** In addition to the rights of the Secured Party specified in Section 5.5 hereof with respect to payments of Accounts, if an Event of Default shall occur and be continuing, upon request of the Secured Party, all proceeds received by any Grantor consisting of cash, checks and other near-cash items shall be held by such Grantor in trust for the Secured Party, segregated from other funds of such Grantor, and shall, forthwith upon receipt by such Grantor, be turned over to the Secured Party in the exact form received by such Grantor (duly indorsed by such Grantor to Secured Party, if required) and held by the Secured Party in the Collateral Account. All proceeds while held by the Secured Party in trust for the Secured Party shall continue to be held as collateral security for all the Obligations and shall not constitute payment thereof until applied as provided in Section 7.5.

- e. **Application of Proceeds.** Except as expressly provided elsewhere in this Agreement, all proceeds received by Secured Party in respect of any sale of, collection from, or other realization upon all or any part of the Collateral shall be applied as provided in Section 2.15 of the Credit Agreement.

7.6. Intellectual Property Collateral License. Solely for the purpose of enabling the Secured Party to exercise rights and remedies under this Section 7 and at such time as the Secured Party shall be lawfully entitled to exercise such rights and remedies, the Grantor hereby grants to the Secured Party, to the extent it has the right to do so, an irrevocable, non-exclusive license (exercisable without payment of royalty or other compensation to the Grantor), subject, in the case of Trademarks, to sufficient rights to quality control and inspection in favor of the grantor to avoid the risk of invalidation of said Trademarks, to use, operate under, license, or sublicense any Intellectual Property Collateral now owned or hereafter acquired by the Grantor, and wherever the same may be located.

8. AGENT

Secured Party has been appointed to act as agent hereunder by and on behalf of Lenders and Lender Counterparties. Secured Party shall be obligated, and shall have the right hereunder, to make demands, to give notices, to exercise or refrain from exercising any rights, and to take or refrain from taking any action (including, without limitation, the release or substitution of Collateral), solely in accordance with this Agreement and the other Credit Documents.

9. CONTINUING SECURITY INTEREST; TRANSFER OF LOANS

This Agreement shall create a continuing security interest in the Collateral and shall (a) remain in full force and effect until the payment in full of the Secured Obligations and the cancellation or termination of the Commitments, (b) be binding upon each Grantor, its successors and assigns, and (c) inure, together with the rights and remedies of Secured Party hereunder, to the benefit of Secured Party and its successors, transferees and assigns. Without limiting the generality of the foregoing clause (c), but subject to the terms of the Credit Agreement, any Lender may assign or otherwise transfer any Loans held by it to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to Lenders herein or otherwise. Upon the payment in full of all Secured Obligations then owing and the cancellation or termination of the Commitments, the security interest granted hereby shall terminate hereunder and of record and all rights to the Collateral shall revert to Grantor. Upon any such termination Secured Party will, at Grantors' expense, execute and deliver to Grantors such documents as Grantors shall reasonably request to evidence such termination.

10. STANDARD OF CARE; SECURED PARTY MAY PERFORM.

The powers conferred on Secured Party hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the exercise of reasonable care in the custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, Secured Party shall have no duty as to any

Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral. Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of Collateral in its possession if such Collateral is accorded treatment substantially equal to that which Secured Party accords its own property. If any Grantor fails to perform any agreement contained herein, Secured Party may itself perform, or cause performance of, such agreement, and the expenses of Secured Party incurred in connection therewith shall be payable by each Grantor under Section 11 of this Agreement.

11. INDEMNITY AND EXPENSES

Each Grantor agrees:

- i. to indemnify, defend and hold harmless Secured Party, its affiliates and its affiliates' respective directors, officers, employees, agents and representatives from and against any and all claims, losses and liabilities in any way relating to, growing out of or resulting from this Agreement and the transactions contemplated hereby (including without limitation enforcement of this Agreement), except to the extent such claims, losses or liabilities result from Secured Party's gross negligence, bad faith, or willful misconduct as determined by a court of competent jurisdiction in a final, non-appealable judgment or order; and
- ii. to pay to Secured Party promptly following written demand (together with appropriate supporting documentation) the amount of any and all reasonable costs and reasonable expenses, including the reasonable fees and expenses of its counsel and of any experts and agents in accordance with the terms and conditions of the Credit Agreement.

The obligations of each Grantor in this Section 11 shall survive the termination of this Agreement and the discharge of such Grantor's other obligations under this Agreement, the Credit Agreement and any other Credit Documents.

12. REGULATORY APPROVALS

- i. Any provision contained herein to the contrary notwithstanding, except for the security interests expressly granted herein or therein or upon the exercise by the Secured Party of rights and remedies in accordance herewith or therewith and pursuant to clause (b) below, upon the occurrence and continuation of an Event of Default, this Agreement and the Credit Agreement and the transactions contemplated hereby and thereby (i) do not and will not constitute, create, or have the effect of constituting

or creating, directly or indirectly, actual or practical ownership of any Subsidiary of Company by the Lenders, or control, affirmative or negative, direct or indirect, by the Lenders over the management or any other aspect of the operation of any Subsidiary, which ownership and control remain exclusively and at all times in such Subsidiary, and (ii) do not and will not constitute the transfer, assignment, or disposition in any manner, voluntarily or involuntarily, directly or indirectly of any license, permit, certificate or authorization at any time issued to any Subsidiary of Company by the FCC, any other federal, state or local regulatory or governmental bodies applicable to or having jurisdiction over Company or any Governmental Authority, or the transfer of control of any such Subsidiary within the meaning of the Federal Communications Act of 1934, as amended and the respective rules and regulations thereunder and thereof, any other federal or state laws, rules and regulations of other operating municipality regulatory or governmental bodies applicable to or having jurisdiction over the Company as well as pursuant to the terms of any franchise, license or similar operating right held by Company.

- ii. Any provision contained herein to the contrary notwithstanding, no action, including any foreclosure on, sale, transfer or other disposition of, or the exercise of any right to vote or consent, shall be taken hereunder by the Secured Party with respect to any item of the Collateral unless and until all applicable requirements (if any) of the FCC under the Federal Communications Act of 1934, as amended, and the respective rules and regulations thereunder and thereof, as well as any other federal or state laws, rules and regulations of other operating municipality regulatory or governmental bodies applicable to or having jurisdiction over Company, have been satisfied with respect to such action and there have been obtained such consents, approvals and authorizations (if any) as may be required to be obtained from the FCC, any operating municipality and any other Governmental Authority under the terms of any franchise, license or similar operating right held by Company. It is the intention of the parties hereto that the Liens in favor of the Secured Party on the Collateral shall in all relevant aspects be subject to and governed by said statutes, rules and regulations as well as the terms of any franchise, license or similar operating right held by Company and that nothing in this Agreement shall be construed to diminish the control exercised by Company except in accordance with the provisions of such statutory requirements and license or similar operating right held by Company and the obtaining in advance of any necessary consents, approvals or authorizations pursuant thereto. Company agrees that upon request by the Secured Party from time to time after the occurrence and during the continuance of an Event of Default it will use its reasonable best efforts to obtain any governmental, regulatory

or third party consents, approvals or authorizations referred to in this Section 12.

13. MISCELLANEOUS

Any notice required or permitted to be given under this Agreement shall be given in accordance with Section 10.1 of the Credit Agreement. No failure or delay on the part of Secured Party in the exercise of any power, right or privilege hereunder or under any other Credit Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. All rights and remedies existing under this Agreement and the other Credit Documents are cumulative to, and not exclusive of, any rights or remedies otherwise available. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists. This Agreement shall be binding upon each Grantor, its successors and assigns and inure to the benefit of and enforceable by Secured Party and its successors and assigns. No Grantor shall, without the prior written consent of Secured Party, assign any right, duty or obligation hereunder. This Agreement, the Credit Agreement and the other Credit Documents embody the entire agreement and understanding between Grantors and Secured Party and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, this Agreement, the Credit Agreement and the other Credit Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties. This Agreement may be executed in one or more counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document.

THE PROVISIONS OF THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF (OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK AND THE MANDATORY CHOICE OF LAW PROVISIONS IN THE UCC GOVERNING THE PERFECTION AND THE EFFECT OF PERFECTION OR NON-PERFECTION OF A SECURITY INTEREST).

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, each Grantor and Secured Party have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

NORTHPOINT COMMUNICATIONS, INC.

By _____
Name:
Title:

NORTHPOINT COMMUNICATIONS GROUP, INC.

By _____
Name
Title:

NORTHPOINT COMMUNICATIONS OF VIRGINIA, INC.

By _____
Name:
Title:

CANADIAN IMPERIAL BANK OF COMMERCE,
as Secured Party

By Colleen Roux
Name:
Title: **COLLEEN ROUX
EXECUTIVE DIRECTOR
CIBC WORLD MARKETS CORP, AS AGENT**

IN WITNESS WHEREOF, each Grantor and Secured Party have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

NORTHPOINT COMMUNICATIONS, INC.

By Henry P. Huff
Name:
Title:

NORTHPOINT COMMUNICATIONS GROUP, INC.

By Henry P. Huff
Name
Title:

**NORTHPOINT COMMUNICATIONS OF VIRGINIA,
INC.**

By Henry P. Huff
Name:
Title:

**CANADIAN IMPERIAL BANK OF COMMERCE,
as Secured Party**

By _____
Name:
Title:

SCHEDULE 1.1(a) TO
PLEDGE AND SECURITY AGREEMENT

Pledged Interests

Pledged Stock:

<u>Grantor</u>	<u>Issuer</u>	<u># of Shares Pledged</u>	<u>Total Issued Shares</u>	<u>% and Type of Interest Pledged</u>	<u>Stock Certifi- cate No.</u>	<u>Par Value</u>
NorthPoint Com- munications, Inc.	NorthPoint Com- munications of Virginia, Inc.	1	1	100% Common Stock	1	\$0.001
NorthPoint Com- munications Group, Inc.	NorthPoint Com- munications, Inc.	100	100	100% Common Stock	1	\$0.001

Pledged Debt:

None.

Partnership Interests:

None.

LLC Interests:

None.

PLEDGE AND SECURITY AGREEMENT

Schedule 1.1(b)

INTELLECTUAL PROPERTY

NorthPoint Communications, Inc.

<u>Trademarks</u>	<u>Serial Number</u>	<u>Filing Date</u>	<u>Registration Date</u>	<u>Registration No.</u>
NORTHPOINT COMMUNICATIONS LOGO	SN 75-358,372	9/17/97	12/29/98	Reg. No. 2,215,499
NORTHPOINT COMMUNICATIONS	SN 75-336,163	8/5/97	12/29/98	Reg. No. 2,215,479
WHY W@IT.COM			Pending	Pending
WHY W@IT?	SN 75-801,028	9/15/99	Pending	Pending
NORTHPOINT COMMUNICATIONS LOGO (NEW)			Pending	Pending
NORTHPOINT COMMUNICATIONS LOGO (DESIGN ONLY)	SN-75-666,669	3/24/99	Pending	Pending
NORTHPOINT COMMUNICATIONS LOGO (NORTHPOINT & DESIGN)	SN 75-666,668	3/24/99	Pending	Pending

NorthPoint Communications Group, Inc.

None

NorthPoint Communications of Virginia, Inc.

None

Pledge and Security Agreement

Schedule 3.1

Financing Statements

See attached.

Pledge and Security Agreement

Schedule 3.3

Certain Liens

None.

Pledge and Security Agreement

Schedule 3.4

Locations of Equipment and Inventory

NorthPoint Communications, Inc.

Arizona
California
Colorado
Connecticut
District of Columbia
Florida
Georgia
Illinois
Indiana
Kansas
Maryland
Massachusetts
Michigan
Minnesota
Missouri
New Jersey
New York
North Carolina
Ohio
Oregon
Pennsylvania
Rhode Island
Texas
Virginia
Washington
Wisconsin

NorthPoint Communications Group, Inc.

None

Northpoint Communications of Virginia, Inc.

None

Pledge and Security Agreement

Schedule 3.5

Office Locations, Etc.

North Point Communications, Inc.

2390 E.Camelback Road
Suite 300
Pheonix, AZ 85016

222 Sutter Street, 7th Floor
San Francisco, CA 94108

3340 Walnut Avenue
Fremont, CA 94538

720 California Street, 6th Floor
San Francisco, CA 94108

6601 Center Drive West
Suite 500
Los Angeles, CA 90045

6 Venture, Suite 100
Irvine, CA 92718

7676 Hazard Center Drive
Fifth Floor
San Diego, CA 92108

303 2nd Street
San Francisco, CA 94107

6121 Hollis Strret
Emeryville, CA 94608

5858 Horton
Emeryville, CA 94608

1999 Broadway
Suite 1900
Denver, CO 80202

8201 Peters Road
Suite 1000
Plantation, FL 33324

101 SouthHall Lane
Maitland, FL 32751

8875 Hidden River Parkway
Suite 300
Tampa, FL 33637

600 Northpark Town Center
1200 Abernathy Road
Suite 1700
Atlanta, GA 30328

125 South Wacker Drive
Suite 300
Chicago, IL 60606

2300 North Barrington Road
Hoffman Estates, IL 60195

Two Mid America Plaza
Suite 800
Oakbrook Terrace, IL 60181

101 West Ohio
20th Floor
Indianapolis, IN 46204

51 Corporate Woods,
Suite #500
9393 W. 110th Street
Overland Park, KS 66210

400 East Pratt Street
8th Floor
Baltimore, MD 21202

28 State Street
Suite 1100
Boston, MA 02109

17672 Laurel Park Drive North
Livonia, MI 48152

7701 France Avenue South, Suite #200
Edina, MN 55435

8400 Normandale Lake Blvd
Minneapolis, MN 55437

12400 Olive Boulevard
Suite 555
St. Louis, MO 63141

1120 Avenue of the Americas
4th Floor
New York, NY 10036

4825 Creekstone Drive
Durham, NC 27703

600 Superior Avenue
Cleveland, OH 44114

100 East Campus View Blvd.
Worthington, OH 43235

10260 SW Greenburg Road
Suite 400
Portland, OR 97223

6 Ironbrige Drive
Collegeville, PA 19426-2045

Building 630
Suite 314
King of Prussia, PA 19406

651 Holiday Drive, Building 5
Suite 300
Pittsburgh, PA 15220

8303 N. Mopac Expressway
Building A, Suite 101
Austin, TX 78759

7557 Rambler Road
Suite 700
Dallas, TX 75231

1330 Past Oak
Suite 1600
Houston, TX 77056

2231 Crystal Drive
Suite 500
Arlington, VA 22202

8000 Towers Crescent Drive
Suite 1350
Vienna, VA 22182

0675504.DOC

11100 NE 8th Street
Suite 600
Bellevue, WA 98804

200 South Exec. Dr.
Brookfield, WI 53005

NorthPoint Communications Group, Inc.

303 2nd Street
San Francisco, CA 94107

Northpoint Communications of Virginia, Inc.

None

PLEDGE SUPPLEMENT

This **PLEDGE SUPPLEMENT**, dated [date], is delivered pursuant to the Pledge and Security Agreement, dated as of December 9, 1999 (as it may be from time to time amended, modified or supplemented, the "**Security Agreement**"), among **NORTHPOINT COMMUNICATIONS, INC.**, the other Grantors named therein, and **CANADIAN IMPERIAL BANK OF COMMERCE**, as Secured Party. Capitalized terms used herein not otherwise defined herein shall have the meanings ascribed thereto in the Security Agreement.

Grantor hereby grants to Secured Party a security interest in all of Grantor's right, title and interest in and to [the Investment Property listed on supplemental Schedule 1.1(a) attached hereto] [and] [the Intellectual Property listed on supplemental Schedule 1.1(b) attached hereto] the following, in each case whether now or hereafter existing or in which Grantor now has or hereafter acquires an interest and wherever the same may be located. All such [Investment Property] [and] [Intellectual Property] shall be deemed to be part of the Collateral and hereafter subject to each of the terms and conditions of the Security Agreement.

IN WITNESS WHEREOF, Grantor has caused this Supplement to be duly executed and delivered by its duly authorized officer as of [date].

[NAME OF GRANTOR]

By: _____
Title:

ACKNOWLEDGMENT OF PLEDGE

This **ACKNOWLEDGMENT OF PLEDGE**, dated [date], is delivered to **CANADIAN IMPERIAL BANK OF COMMERCE**, as Secured Party, pursuant to the Pledge and Security Agreement, dated as of December 9, 1999, (as it may be from time to time amended, modified or supplemented, the "**Security Agreement**"), among **NORTHPOINT COMMUNICATIONS, INC.**, the other Grantors named therein, and Secured Party. Capitalized terms used herein not otherwise defined herein shall have the meanings ascribed thereto in the Security Agreement.

[NAME OF ISSUER], a _____ corporation ("**Issuer**"), hereby acknowledges receipt of a conformed copy of the Security Agreement and (a) consents to the terms thereof, and (b) confirms that Secured Party has been registered as the registered owner of all of **[NAME OF APPLICABLE GRANTOR]**'s right, title and interest in, to and under the security referred to below in the books and records of Issuer.

IN WITNESS WHEREOF, Issuer has caused this Acknowledgment of Pledge to be duly executed and delivered by its duly authorized officer as of the date above first written.

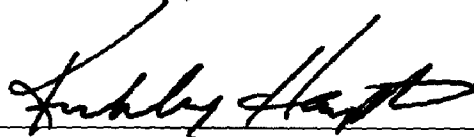
[NAME OF ISSUER]

By: _____
Title:

Certificate of Express Mail under 37 CFR 1.10

Attorney Ref. No.: 244130-419
Title of Paper: Pledge and Security Agreement
Parties Involved: NorthPoint Communications, Inc. and
Canadian Imperial Bank of Commerce
"Express Mail" Label No.: EL395965227US
Date of Deposit: December 16, 1999

I hereby certify that the foregoing is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Commissioner of Patents and Trademarks, Box Assignments, Washington, DC 20231



Kimberley Hauptman